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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

Kate Burdge, an individual; Chris Davis, an individual, Kaveh Hedayatzadeh, an individual, and Aaron Schlosser, an individual; each individually and on behalf of all similarly situated and/or aggrieved employees of DEFENDANTS,

Plaintiffs,

vs.

Votem EC, Inc., a Delaware corporation, Votem Corp., a Delaware corporation, Pete Martin, an individual, and DOES 1 through 10 inclusive,

Defendants.

Case No. 37-2019-00017723-CU-OE-CTL

CLASS ACTION COMPLAINT

[Code Civ. Proc. § 382]

1. Failure to Timely Pay All Wages Due Upon Separation of Employment; (Labor Code § 201).
2. Failure to Provide Adequate Notice of Mass Lay-Off (Labor Code § 1400 et seq.)
3. Fraudulent Misrepresentation

1 Plaintiffs Kate Burdge, Chris Davis, Kaveh Hedayatzadeh, and Aaron Schlosser
2 individually and on behalf of all similarly situated and/or aggrieved employees of Defendants
3 complain:

4 INTRODUCTION

5 1. Plaintiffs Kate Burdge, Chris Davis, Kaveh Hedayatzadeh, and Aaron Schlosser
6 bring this individual and putative class action against Defendants Votem EC, Inc. (hereinafter,
7 “Votem EC”), Votem Corp., Pete Martin, and DOES 1 through 10, inclusive for (a) the failure to
8 timely pay wages due upon Plaintiffs involuntary separation of employment in violation of
9 California Labor Code sections 202 and 204, (b) the failure to provide the notification required by
10 the California Labor Code section 1400 *et seq.*, the Worker Adjustment and Retraining
11 Notification Act (CAL-WARN), and (c) the fraudulent misrepresentations by Pete Martin as an
12 representative of Votem Corp. and Votem EC.

13 2. Plaintiffs bring this action on behalf of all former employees who were employed
14 by Votem EC in the state of California and whose employment was terminated during the time
15 period of January 19, 2019 through February 18, 2019 (hereinafter, the “relevant time period”) and
16 did not receive from Defendants all wages due upon termination and/or who did not receive from
17 Defendants 60-days’ notice of their termination.” (hereinafter, “aggrieved employees”).

18 3. Plaintiffs seek to recover, inter alia, unpaid wages, interest, statutory damages,
19 attorney’s fees, and costs pursuant to California Labor Code sections 201, 203, 204, 218.5, 218.6,
20 1402, and 1404, among others.

21 4. Plaintiffs reserve the right to name additional representatives.

22 PARTIES

23 A. Plaintiffs

24 5. Plaintiff Kate Burdge, at all relevant times herein, was an employee of Defendants
25 and worked at Defendants’ office location at 4250 Executive Square, Suite 600, La Jolla, CA
26 92037.

27 6. Kate Burdge is a resident of the State of California and the Defendants’ conduct, as
28 alleged herein, occurred in the County of San Diego.

1 7. Kate Burdge was laid off by Defendants on or about February 15, 2019, without
2 notice, and was not and has not been paid the wages due upon the termination of her employment.

3 8. Kate Burdge is an “aggrieved employee” within the meaning of Labor Code section
4 2699(c) because she was employed by Defendants and suffered one or more of the Labor Code
5 violations committed by the Defendants.
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7 9. Plaintiff Chris Davis, at all relevant times herein, was an employee of Defendants
8 and worked at Defendants’ office location at 4250 Executive Square, Suite 600, La Jolla, CA
9 92037.
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11 10. Chris Davis is a resident of the State of California and the Defendants’ conduct, as
12 alleged herein, occurred in the County of San Diego.

13 11. Chris Davis was laid off by Defendants on or about February 15, 2019, without
14 notice, and was not and has not been paid the wages due upon the termination of his employment.
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16 12. Chris Davis is an “aggrieved employee” within the meaning of Labor Code section
17 2699(c) because he was employed by Defendants and suffered one or more of the Labor Code
18 violations committed by the Defendants.

19 13. Plaintiff Kaveh Hedayatzadeh, at all relevant times herein, was an employee of
20 Defendants and worked at Defendants’ office location at 4250 Executive Square, Suite 600, La
21 Jolla, CA 92037.
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23 14. Kaveh Hedayatzadeh is a resident of the State of California and the Defendants’
24 conduct, as alleged herein, occurred in the County of San Diego.

25 15. Kaveh Hedayatzadeh was laid off by Defendants on or about February 15, 2019,
26 without notice, and was not and has not been paid the wages due upon the termination of his
27 employment.
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1 16. Kaveh Hedayatzadeh is an “aggrieved employee” within the meaning of Labor
2 Code section 2699(c) because he was employed by Defendants and suffered one or more of the
3 Labor Code violations committed by the Defendants.

4 17. Plaintiff Aaron Schlosser, at all relevant times herein, was an employee of
5 Defendants and worked at Defendants’ office location at 4250 Executive Square, Suite 600, La
6 Jolla, CA 92037.

7 18. Aaron Schlosser is a resident of the State of California and the Defendants’ conduct,
8 as alleged herein, occurred in the County of San Diego.

9 19. Aaron Schlosser was laid off by Defendants on or about February 15, 2019, without
10 notice, and was not and has not been paid the wages due upon the termination of his employment.

11 20. Aaron Schlosser is an “aggrieved employee” within the meaning of Labor Code
12 section 2699(c) because he was employed by Defendants and suffered one or more of the Labor
13 Code violations committed by the Defendants.

14 21. At all relevant times, Plaintiffs and, on information and belief, the aggrieved
15 employees of Defendants in California were subject to the same policies, practices, and procedures
16 governing their employment and their payment of wages earned and hours worked.

17 **B. Defendants**

18 22. Votem EC is a Delaware corporation, now headquartered in Cleveland, Ohio, but
19 at all times relevant herein was headquartered in San Diego, California. Votem EC provides
20 election management services to business and government entities.

21 23. Votem Corp. is a Delaware corporation headquartered in Cleveland, Ohio and the
22 parent company of Votem EC.

23 24. Pete Martin is the Chief Executive Officer, Chief Financial Officer, and Secretary
24 of Votem EC. Pete Martin is also the Chief Executive Officer of Votem Corp and, on information
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1 belief, a direct or indirect owner of Votem Corp.

2 25. The true names and capacities of the Defendants named as DOES 1 through 10,
3 inclusive, are presently unknown to Plaintiffs. Plaintiffs will amend this Complaint, setting forth
4 the true names and capacities of the fictitious Defendants when their names are ascertained.
5 Plaintiffs are informed and believe, and on that basis alleges, that each of the fictitious Defendants
6 participated in the acts alleged in this Complaint.
7

8 26. Plaintiffs are informed and believe that at all relevant times, each Defendant,
9 whether named or fictitious, were employers, as defined under the California Labor Code, of
10 Plaintiffs and the aggrieved employees as Defendants exercised control over Plaintiffs' and the
11 aggrieved employees' wages, hours of work and/or working conditions and was the alter ego of
12 each of the other Defendants.
13

14 27. Plaintiffs are informed and believe that at all relevant times, each Defendant,
15 whether named or fictitious, was the agent, employee or other person acting on behalf of every
16 other Defendant, and in committing the violations alleged in this Complaint, acted within the scope
17 of such agency or employment and ratified the acts of each other Defendant.
18

19 28. Plaintiffs are further informed and believe that at all relevant times, each Defendant,
20 whether named or fictitious, acted as the agent for the other Defendants in carrying out a joint
21 scheme, business plan or policy, and that a unity of interest and ownership between each Defendant
22 exists such that all Defendants acted as a single employer and that the acts of each Defendant are
23 legally attributable to all other Defendants.
24

25 **JURISDICTION AND VENUE**

26 29. This Court has subject-matter jurisdiction to hear this case because Plaintiffs are
27 informed and believe that the monetary damages and restitution sought herein for Defendants'
28 conduct exceeds the minimum jurisdictional limits of the Superior Court.
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1 30. Venue is proper in the Superior Court of the County of San Diego pursuant to Code
2 of Civil Procedure section 395, subdivision (a) as none of the Defendants presently reside in the
3 State of California and all of the Plaintiffs currently reside in the County of San Diego.

4
5 **CLASS REPRESENTATION ALLEGATIONS**

6 31. Plaintiffs bring this action as a class action proposes the following class:

7 All former employees of Votem EC who were laid off between the period of
8 January 19, 2019 through February 18, 2019, who were not paid all wages due as
9 of that date and/or who were not given 60 days' notice of the termination of their
employment.

10 32. Plaintiffs exclude entities in bankruptcy, entities whose obligations have been
11 discharged in bankruptcy, governmental entities, and judicial officers who preside over this case.

12 33. Plaintiffs maintain the right to create additional subclasses or classes, if necessary,
13 and to revise these definitions to maintain a cohesive class that does not require individual inquiry
14 to determine liability.

15
16 34. The exact number of class members is unknown to Plaintiffs at this time, but such
17 information can be ascertained through appropriate discovery, specifically from records
18 maintained by Votem EC, Votem Corp. and/or its agents. Upon information and belief, the number
19 of putative members of the class exceeds 60 members.

20
21 **EXISTENCE AND PREDOMINANCE OF**
22 **COMMON QUESTIONS OF LAW AND FACT**

23 35. There are common questions of law and fact common and of general interest to the
24 class. These common questions of law and fact predominate over any questions affecting only
25 individual members of the class. Such common questions include, but are not limited to, the
26 following:
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- 1 a. Whether, as successor in interest of Everyone Counts, Votem EC's San Diego
2 offices was a "covered establishment" as defined by California Labor Code
3 section 1400 subdivision (a);
4
5 b. Whether, as successor in interest of Everyone Counts, Votem EC is an
6 "employer" as defined by California Labor Code section 1400 subdivision (b);
7
8 c. Whether there was a "mass layoff" as defined by California Labor Code section
9 1400 subdivision (c);
10
11 d. Whether Pete Martin and Votem Corp. are "employers" as defined by the
12 California Labor Code and thus liable for the violations complained of herein.
13
14 e. Whether Defendants' failure to pay wages to the class members required under
15 California Labor Code section 201 was willful;
16
17 f. Whether during the corporate-wide events, Pete Martin made materially false
18 representations to class members as to the financial health of Votem EC; and
19
20 g. Whether during corporate-wide teleconferences, Pete Martin made materially
21 false representations to class members as to the financial health of Votem EC.
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23 36. Questions of law and fact predominate over any questions affecting only individual
24 members.
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27 **TYPICALITY AND NUMEROSITY**

28 37. The claims of the named Plaintiffs are typical of the claims of the respective class.
Upon information and belief, the total number of members of each putative class exceeds 60
members and is so numerous that separate joinder of each member is impracticable.

29 **ADEQUATE REPRESENTATION**

30 38. Plaintiffs will fairly and adequately protect the interests of the members of the class
and have no interest antagonistic to those of other class members. Plaintiffs have retained class

1 counsel competent to prosecute class actions, and such class counsel is financially able to represent
2 the classes.

3 **SUPERIORITY**

4 39. The class action is superior to other available methods for the fair and efficient
5 adjudication of this controversy since individual joinder of all members of the class is
6 impracticable. The interests of judicial economy favor adjudicating the claims for the Plaintiffs
7 class rather than on an individual basis. The class action mechanism provides the benefit of unitary
8 adjudication, economies of scale and comprehensive supervision by a single court.
9

10 **GENERAL ALLEGATIONS**

11 40. Everyone Counts, Inc. (hereinafter, “Everyone Counts”) was a Delaware
12 corporation, headquartered in California, that developed voting-related Internet-based products
13 (e.g., online Emmy voting, state voter registration).
14

15 41. Plaintiffs are informed and believe that, in 2018, Everyone Counts had
16 approximately 75 employees, at least ten of which were hourly non-exempt employees and the
17 remaining were salaried, exempt employees.

18 42. On or about October 2, 2018, Everyone Counts was acquired through an asset
19 purchase agreement by Votem Corp.

20 43. Votem Corp. formed Votem EC, and, after the completion of the asset purchase
21 agreement, Votem EC, as successor in interest to Everyone Counts, hired nearly all the Everyone
22 Counts employees to perform the same functions that had performed for Everyone Counts,
23 including Plaintiffs and, upon information and belief, the aggrieved employees.

24 44. Pete Martin was the Chief Executive Officer of Votem EC and traveled to San
25 Diego California to work and interact with the Votem EC employees, almost all of whom work in
26 San Diego California, including Plaintiffs and, on information and belief, the aggrieved
27 employees.

28 45. On or about November 16, 2018, Votem EC failed to pay some of its exempt
employees on the scheduled pay date but did so several days later. Because of this delay, most

employees, including Plaintiffs and, upon information and belief, the aggrieved employees became concerned about the financial health of Votem EC.

46. In December 2018, at a corporate-wide event in San Diego, California, attended by Plaintiffs and, upon information and belief, the aggrieved employees and by Pete Martin, Pete Martin attempted to assuage the employees' concerns, stating that the prior payroll problem was simply a glitch and that the financial health of Votem EC was strong.

47. Between January 2019 and February 2019, Votem EC conducted weekly corporate-wide teleconferences that were attended by Plaintiffs and, upon information and belief, the aggrieved employees. During each of these teleconferences, Pete Martin continued to misrepresent that the financial health of Votem EC was strong and that the company had a six-month financial runway. The last of these teleconferences occurred on or about February 8, 2019, only days before the company closed its doors.

48. Pete Martin was well aware that the Votem EC's financial health was dire. On one occasion, Pete Martin borrowed money, on behalf of Votem EC, from one of the company's officers to cover payroll and on another occasion, borrowed money, on behalf of Votem EC from a high-interest lender to make payroll.

49. On or about February 15, 2019, without any notice, Defendants laid off its entire workforce, including Plaintiffs and, upon information and belief, the aggrieved employees, and, failed to pay the wages due to those employees in violation of the California Labor Code. Plaintiffs are informed and believe that over 60 employees were laid off.

50. Because no notice was given as required by the California Labor Code and because Pete Martin continued to misrepresent the health of Votem EC, even days before the company closed its doors, Plaintiffs and, upon information and belief, the aggrieved employees were all taken by surprise.

51. Plaintiffs and, upon information and belief, the aggrieved employees had not planned for this eventuality and remained unemployed for a period after they were laid off, which could have been avoided had Pete Martin not made these misrepresentations.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

4 (Violation of Labor Code §§ 201 and 203)

5 (Alleged by all Plaintiffs Individually and on behalf of the Class Members
6 against all Defendants)

7 52. Plaintiffs re-allege and incorporate the allegations contained in the paragraph
8 above, as though fully set forth herein.

9 53. Plaintiffs and the aggrieved employees are former employees of Defendant Votem
10 EC in California within the meaning of employee under the Labor Code.

11 54. Upon information and belief, Plaintiffs and the aggrieved employees are former
12 exempt and non-exempt employees of Defendants Votem Corp and Pete Martin in California
13 within the meaning of employee under the Labor Code.

14 55. Labor Code section 201(a) provides that “[i]f an employer discharges an employee,
15 the wages earned and unpaid at the time of discharge are due and payable immediately.”

16 56. Labor Code section 203(a) states, in relevant part, “[i]f an employer willfully fails
17 to pay without abatement or reduction, in accordance with sections 201, 201.3, 201.5, 202, and
18 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall
19 continue as a penalty from the due date thereof at the same rate until paid or until an action therefor
20 is commenced; but the wages shall not continue for more than 30 days.”

21 57. Upon the mass layoff in February 2019, Defendants willfully failed to pay Plaintiffs
22 and, on information and belief, the aggrieved employees all wages due and owing to them, within
23 the time required by Labor Code section 201.

24 58. To date, Defendants have yet to pay Plaintiffs and, on information and belief, the
25 aggrieved employees, the full amount of all wages due and owing to them.

26 59. As a direct result of Defendants’ violations alleged herein, Plaintiffs and, upon
27 information and belief, the aggrieved employees suffered and continue to suffer losses related to
28 the use and enjoyment of wages due and owing to them, including lost interest on such monies and
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1 expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under
2 state law, all to their respective damage in an amount to be shown according to proof at trial and
3 within the jurisdictional limitations of this Court.

4 60. Plaintiffs intend to provide notice to the Labor and Workforce Development
5 Agency and Defendants of the above violations under Code of Civil Procedure section 2699.3
6 subdivision (a)(1) and, if warranted, may seek to amend this complaint under that Code of Civil
7 Procedure section 2699.3 subdivision (a)(2) to recover civil penalties.

8
9 **SECTION CAUSE OF ACTION**

10 **FAILURE TO PROVIDE NOTICE OF A MASS LAYOFF**

11 (Violation of California Labor Code §§ 1401 and 1402)

12 (Alleged by all Plaintiffs Individually and on behalf of the Class Members
13 against all Defendants)

14 61. Plaintiffs re-allege and incorporate the allegations contained in the paragraph
15 above, as though fully set forth herein.

16 62. Plaintiffs and the aggrieved employees are former employees of Defendant Votem
17 EC in California within the meaning of employee under the Labor Code.

18 63. Upon information and belief, Plaintiffs and the aggrieved employees are former
19 employees of Defendants Votem Corp and Pete Martin in California within the meaning of
20 employee under the Labor Code.

21 64. Plaintiffs are informed and believe that, as successor in interest of Everyone
22 Counts, Defendants are employers under California Labor Code section 1400 subdivision (b).

23 65. Plaintiffs are informed and believe that Votem EC's offices in San Diego are a
24 "covered establishment" under California Labor Code section 1400 subdivision (a).

25 66. Plaintiffs are informed and believe that Defendants ordered a mass layoff under
26 California Labor Code section 1400 subdivision (d), laying off over 60 employees in February
27 2019.
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67. California Labor Code section 1401 provides in part that “[a]n employer may not order a mass layoff, relocation, or termination at a covered establishment unless, 60 days before the order takes effect, the employer gives written notice of the order.” Defendants did not comply with the notice requirements of California Labor Code section 1401.

68. Defendants' failure to comply with California Labor Code section 1401 makes them liable for statutory damages under California Labor Code section 1402, including back pay and the cost of any benefits to which an employee would have been entitled.

69. Defendants' failure to comply with California Labor Code section 1401 makes Defendants' liable for civil penalties under California Labor Code section 1403.

70. As a direct result of Defendant's violations alleged herein, Plaintiffs and, upon information and belief, the aggrieved employees suffered from their lack of employment caused by the lack of notice, and seek the statutory penalties owing to them, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

71. Plaintiffs intend to provide notice to the Labor and Workforce Development Agency and Defendants of the above violations under Code of Civil Procedure section 2699.3 subdivision (a)(1) and, if warranted, may seek to amend this complaint under that Code of Civil Procedure section 2699.3 subdivision (a)(2) to recover civil penalties.

THIRD CAUSE OF ACTION

FRAUDULENT MISREPRESENTATION

(Alleged by all Plaintiffs Individually and on behalf of Class Members
against all Defendants)

72. Plaintiffs re-allege and incorporate the allegations contained in the paragraphs above, as though fully set forth herein.

73. Plaintiffs and the aggrieved employees are employees of Defendants in California within the meaning of employee under the Labor Code.

1 74. Upon information and belief, Plaintiffs and the aggrieved employees are former
2 employees of Defendants Votem Corp and Pete Martin in California within the meaning of
3 employee under the Labor Code.

4 75. Defendants, through there agent, Pete Martin, made several fraudulent
5 misrepresentations to Plaintiffs and, upon information and belief, the aggrieved employees.

6 76. These fraudulent misrepresentations include that, in December 2018, at a corporate-
7 wide event in San Diego, California, attended by most of Votem EC's employees and by Pete
8 Martin, Pete Martin stated that the prior payroll problems were a glitch and that the financial health
9 of Votem EC was strong.

10 77. These fraudulent misrepresentations include that, between January 2019 and
11 February 2019, Votem EC conducted weekly corporate-wide teleconferences. During each of these
12 teleconferences, Pete Martin misrepresented that the financial health of Votem EC was strong and
13 that the company had at least a six-month financial runway. The last of these teleconferences
14 occurred on or about February 8, 2019, only days before the company closed its doors.

15 78. Defendant Pete Martin knew the Votem EC's financial health was dire and that
16 these representations were false.

17 79. Defendant Pete Martin made these misrepresentations intending that Votem EC
18 employees would rely on these misrepresentations, continue to work and not seek alternative
19 employment.

20 80. Plaintiffs, and upon information and belief, the aggrieved employees did rely on
21 these misrepresentations, continued to work and did not seek alternative employment.

22 81. As a direct result of Defendants' violations alleged herein, Plaintiffs and the
23 aggrieved employees suffered (a) from their lack or employment after being terminated by
24 Defendants, and (b) from Defendants failure to pay them wages due upon their termination of
25 employment due to Votem EC's financial condition.

26 82. Plaintiffs and the aggrieved employees seek damages for the back wages remaining
27 due as well as lost wages cause by their subsequent loss of employment resulting from Defendants'
28 misrepresentations.

83. Defendants actions alleged above are willful, wanton, malicious, and oppressive to justify the award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

- a. For general, special, and punitive damages;
- b. For an award of damages for unpaid wages;
- c. For statutory damages, including but not limited to those provided for under California Labor Code sections 203 and 1402;
- d. For civil penalties, including but not limited to those provided for under California Labor Code sections 210 and 1403;
- e. For reasonable attorney's fees, costs of suit, and interest to the extent permitted by law, including but not limited to those provided for under to Code of Civil Procedure section 1021.5 and California Labor Code sections 218.5, 218.6, and 1404;
- f. For pre- and post-judgment interest; and
- g. For any other relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs and members of the Class hereby request a trial by jury of all issues triable by jury.

Respectfully submitted,

DATED: April 4, 2019

By: John K. Landay
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